

**Response to Comments  
for the  
Draft Beneficial Use Amendment and Staff Report  
Proposing to Update the  
*North Coast Regional Water Quality Control Plan*  
(Basin Plan)**

**June 13, 2003**

Prepared by Staff of the  
North Coast Regional Water Quality Control Board  
Watershed Management Division  
Planning Unit

Please note that all page numbers cited in this document refer to the March 2003 version of the Draft Beneficial Use Amendment and Staff Report, unless noted otherwise.

1. COMMENT: [Brenda Adelman, Russian River Watershed Protection Council, Sonoma County Water Agency]  
Request for clarification of Statement on page 2- 7.00: "Coyote Dam is non-operational." This project is operational; the hydropower plant is required to operate in order to keep a FERC permit.

RESPONSE: We concur. Staff has made the corresponding correction.

2. COMMENT: [Brenda Adelman]  
Page 2- 8.00; paragraph one under Designation of RARE Beneficial Use. Request to clarify double negative in sentence. "...only that no occurrence data was not entered in CNDDDB as of January 2001."

RESPONSE: Staff has revised this sentence, which now reads; "...only that no occurrence data was entered in the CNDDDB inventory as of January 2001.

3. COMMENT: [Brenda Adelman]  
On Page 2- 6.00, under the discussion of recreation, suggests adding mention of photography, painting, and the arts in general, as those uses are common in the Russian and other North Coast watersheds.

RESPONSE: Staff agrees with and appreciates the suggestion and has added language to the amendment under the recreation discussion.

4. COMMENT: [Brenda Adelman]  
The Laguna de Santa Rosa labeled as a Flood Control Channel on many maps. There is no mention in the Staff Report of flood control channel management (vegetation removal, etc.) versus wetland and beneficial use protection.

RESPONSE: Staff handles applications for modification to flood control channels in the same way we have handled applications for activities in other surface waters. Applicants have to show the activity is necessary and have to provide mitigation for any potential impacts to beneficial uses. We do not feel that we need any special language in the Beneficial Use Chapter of the Basin Plan for these activities. It may be appropriate to add a discussion of this type when updating the Implementation Plan Section (Chapter 4) in the future.

5. COMMENT: [Brenda Adelman]  
Commenter is opposed to the addition of the WARM designation for the Laguna de Santa Rosa. The following requests for clarification were submitted:
  - A. It is not clear how we will manage conflicting beneficial uses based on the comment on page 2-6.00, paragraph 2, "to protect the most sensitive species."
  - B. How do we manage for COLD and WARM in the same waterbody (i.e. the Laguna de Santa Rosa), especially when dealing with native and non-native species?

RESPONSE: Staff relied on the best professional judgment of California Department of Fish and Game staff, Regional Board staff, as well as others who have field knowledge of local

stream conditions in order to update the fisheries related beneficial use designations in the proposed amendment. We have evidence that both cold and warm freshwater species occur now, as well as historically, within the Laguna de Santa Rosa (Laguna). We are therefore, obliged to designate both COLD and WARM beneficial uses for the Laguna.

There are many waterbodies in the North Coast Region, which support *both* cold and warm freshwater ecosystems. One reason for this is because under natural conditions, a waterbody segment may provide cold freshwater habitat at one time and warm freshwater habitat at another time. For instance, in the winter a waterbody, under natural conditions, may provide cold freshwater habitat and in the late summer, this same waterbody may provide warm freshwater habitat. Likewise, a waterbody may contain segments in the warm water range and other segments in the cold water range. The fact that both cold water and warm water species were historically, as well as presently found in the Laguna system is testimony to these examples.

The flexibility of many warm water species allows them to tolerate higher water temperatures than cold water species, while still able to sustain populations in a cold water environment.

The Basin Plan (pg. 2 – 8.00) provides the explanation that water quality objectives are established to be sufficiently stringent to protect the most sensitive use. The COLD beneficial use is among the most sensitive uses and we are therefore obliged to maintain water quality protective of the existing COLD beneficial use.

Addition of the WARM beneficial use to waterbodies that have an existing COLD designation shall not result in a reduction in the protection of COLD species (i.e., lowering water quality).

Regarding the issue of native versus non-native species, water quality laws and regulations require us to protect all species.

6. COMMENT: [Brenda Adelman]

- A. Does the addition of the WARM designation affect the current Dissolved Oxygen (DO) and Temperature objectives for the Laguna?
- B. How is “natural receiving water temperature” defined, as stated under temperature water quality objectives (Basin Plan Chapter 3)?

RESPONSE: The addition of the WARM designation does not have an effect on the current DO and temperature objectives for the Laguna. This amendment only serves to update the Beneficial Use Section (Chapter 2) of the Basin Plan, to accurately reflect the uses of waters within the region. The temperature and DO water quality objectives for the protection of threatened and endangered species in the Russian River are currently being reviewed with a separate basin plan amendment project.

The term “natural receiving water temperatures” (as defined in Appendix 3 to the Basin Plan) is applied through permits (i.e. NPDES, WDRs) by conducting monitoring at locations upstream and downstream of the discharge in question. However, staff recognizes that methods for determining “natural” or “background” conditions are varied and evolving. Staff is currently reviewing the latest methods used in determining “natural” temperature conditions for use in TMDLs and TMDL Implementation Plans, which can be accomplished

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via several methods including using reference temperatures from related undisturbed watersheds, modeling, computer simulation applications, and combinations thereof.

7. COMMENT: [Brenda Adelman, Sonoma County Water Agency]  
Why wasn't the Spawning, Reproduction, and/or Early Development (SPWN) beneficial use designated for the Laguna HSA? If this HSA includes Mark West and Santa Rosa Creeks (tributaries to the Laguna) it should receive this designation.

RESPONSE: The Laguna HSA does not include Mark West Creek and includes a very small portion of Santa Rosa Creek at its confluence with the Laguna. However, this HSA does include Blucher and Copeland Creeks, which contain spawning habitat. Therefore, staff has added the SPAWN use to the Laguna HSA.

8. COMMENT: [Brenda Adelman]  
In general, if a waterbody has a designation, does the designation apply to all of its tributaries as well?

RESPONSE: Yes. In most cases the proposed amendment designates uses to Hydrologic Areas (HAs) or Subareas (HSAs), which have specific boundaries. In these cases, the designated uses apply to all waters within the boundaries of the defined area, including all tributaries ("Tributary Rule," see page 2-1.00 of the Beneficial Uses Amendment). In a few cases, the beneficial uses are designated to a specific waterbody. In these cases, the beneficial uses are designated specifically to the waterbody and include all of its tributaries, unless stated otherwise. Through this proposed amendment, staff aims to refine and make more precise some of those designations by breaking down some of the Hydrologic Units (HUs) and Hydrologic Areas (HAs) for beneficial use designations on a smaller, more precise scale, where available information permits that level of detail.

9. COMMENT: [Brenda Adelman]  
Why was there no listing for the Laguna for the wetland beneficial uses Flood Peak Attenuation (FLD) and Wetland Habitat (WET)?

RESPONSE: Currently, staff makes wetland beneficial use determinations on a case-by-case basis. With existing data, staff would only be able to officially designate a few waterbodies as having existing wetland beneficial uses. Rather than designate a few, and leave out many, staff is recommending continuing to make the determination on a case-by-case basis, based on available information. Therefore, in the Beneficial Use Table, 2-1, we have designated these uses as potential in the general wetland categories (saline and freshwater). In the future, we plan to have all of the wetlands within the region delineated and existing and potential uses determined, so that we may apply specific wetland uses to well-defined areas.

10. COMMENT: [Don McEnhill, Russian RiverKeeper]  
Supports the proposed amendment (Alternative #3) and is pleased to see the beneficial uses designated to hydrologic subareas, with the exception of the following comments (#11-13).

11. COMMENT: [Don McEnhill]  
The wetland beneficial uses (WET, WQE, and FLD) should be applied to Russian River areas that were historically wetland areas and still perform these functions.

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RESPONSE: Staff agrees that there are instances where the wetland beneficial uses apply to surface waters, including the possibility of a "potential" designation where the use was historically present and/or can be reasonably achieved in the future. However, this is something that will be accomplished with future Basin Plan updates. Please see the explanation provided in the response to Comment # 9.

12. COMMENT: [Don McEnhill]

States disagreement with applying the WARM beneficial use to the Laguna. Warm species can survive in Cold waters, but not vice-versa.

RESPONSE: Please see the response to Comment # 5 above.

13. COMMENT: [Don McEnhill]

The middle reaches of the Russian River, and specifically Geyserville HSA, were historically areas where the Pomo Indians collected basket-weaving material. The Cultural (CUL) beneficial use should be designated for these areas.

RESPONSE: Staff is interested in this type of information. However, we require more specific documentation to be submitted for the administrative record to support the designation before we can make this addition.

14. COMMENT: [Ursula Jones, Private Citizen]

Estuarine Habitat (EST) should be designated for the Gualala HSA (113.85) not the North Fork in the Beneficial Uses Table (2-1).

RESPONSE:

We concur. This was an error that has been corrected.

15. COMMENT: [Ursula Jones]

Gualala HSA should be listed for BSA (formerly BIOL) as it is one of few estuaries not naturally breached during most of the year.

RESPONSE: The BSA designation is only for those areas that have been officially identified as "biologically significant" by those agencies charged the responsibility of designating these locations, such as the California Department of Parks and Recreation (as described on pages 9 –11 of the staff Report. We suggest that the commenter approach one of these agencies with this proposal. Once an area has been officially identified as "biologically significant," the Regional Water Board can designate the use to a waterbody during a triennial review.

16. COMMENT: [Chris Poehlman, Private Citizen]

Requested clarification of the WQE definition. Believes that it should possibly include "areas upstream" as well.

RESPONSE: Please see response to Comment #11.

17. COMMENT: [Alan Levine, Coast Action Group]

The BIOL (now BSA) beneficial use should be designated to the Gualala and Big Rivers (as well as possibly Garcia in the future) as their estuaries are within State Parks.

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RESPONSE: We concur. Staff has added the BSA designation to waterbodies that fall within State Parks and Reserves boundaries as this meets the revised definition.

18. COMMENT: [Alan Levine]

Any drainage that contributes to an estuary should be designated with the Estuarine Habitat (EST) beneficial use.

RESPONSE: Staff disagrees. The definition of Estuarine Habitat (EST) indicates that this use applies only to areas that provide estuarine habitat.

19. COMMENT: [Alan Levine]

Why is the aquaculture (AQUA) beneficial use designated as potential on the Garcia and Gualala Rivers? *The Gualala Steelhead Project is only in one location, but commenter understands that they plant steelhead throughout much of the watershed.*

RESPONSE: Areas that are designated with Potential Aquaculture (AQUA) include locations where 1) there could potentially be projects in the future, 2) where there have been projects in the past (prior to November 28, 1975, the date of promulgation of U.S. EPA's first water quality standards regulation), or 3) otherwise meet the qualifications for a potential designation (see page 2 – 8.00 of the Amendment).

20. COMMENT: [Kathleen Morgan, Private Citizen]

Requested clarification of the SAL (Inland Saline Water Habitat) definition. Wondered if parts of the Gualala River should be designated with this use.

RESPONSE: The definition of the SAL beneficial use follows: *Uses of waters that support inland saline water ecosystems including, but not limited to, preservation or enhancement of aquatic saline habitats, vegetation, fish, or wildlife, including invertebrates.*

As outlined by the definition above, SAL only applies to inland areas. The North Coast Region does not have any areas that qualify for this designation.

21. COMMENT: [The Hoopa Valley Tribe, Karuk Tribe, Yurok Tribe, The Smith River Rancheria, The Wiyott Tribe -Table Bluff Reservation]

Support the addition of the proposed Native American Cultural Use (CUL) was submitted by the tribes listed above. In addition, supporting documentation for adding the CUL use to various waterbodies was also supplied by these tribes.

RESPONSE: We appreciate the interest in this Basin Plan update. We are proposing the addition of the CUL designation to several Hydrologic Areas and Subareas based on the information submitted.

22. COMMENT: [California Farm Bureau]

The proposed amendment requires an attainability analysis for the proposed beneficial uses, in order "to provide insight into how water quality objectives will be established to protect these uses and whether such protection is economically feasible."

RESPONSE: Staff disagrees. As stated in 40 CR 131.10 (k): A State is not required to conduct a Use Attainability Analysis (UAA) under this regulation whenever designating uses that include those specified in section 101 (a) (2) of the Clean Water Act (CWA). Under this section of the CWA, States are required to "provide, wherever attainable, water quality for

the protection and propagation of fish, shellfish, and wildlife and recreation in and on water.” The four proposed beneficial uses; Wetland Habitat (WET), Flood Peak Attenuation (FLD), Water Quality Enhancement (WQE), and Native American Cultural (CUL) meet the criteria established under these regulations.

The focus of the Basin Plan Amendment is updating the beneficial use designations in the Basin Plan. The Beneficial Use Chapter Update was identified as the highest priority by the Regional Water Board during the 2001 – 2004 Triennial Review of the Basin Plan.

A major update included as part of this amendment, is the designation of beneficial uses on a more refined scale. Designated uses are further identified as either existing (E) or potential (P).

The Clean Water Act (CWA) Section 131.3, defines existing uses as “those uses, which were actually attained in the waterbody on or after November 28, 1975,<sup>1</sup> whether or not they are included in the water quality standards. Federal law requires the designation of instream uses and the level of water quality necessary to protect the existing uses to be maintained. (40 CFR section 131.12(a)(1).) Further, no activity is allowable under the Antidegradation Policy, which would partially or completely eliminate any existing use, whether or not that use is designated in a State’s water quality standards.

In summary, the existing uses proposed for designation in the Basin Plan; a) have been attained (water quality has been suitable to allow the uses since November 28, 1975; and b) must be protected whether or not they are designated in the Basin Plan. It is therefore the opinion of your staff, that updating the Basin Plan as proposed will not create any new legal obligations, but serve to add greater precision and clarity to the Plan, for the benefit of both staff and the regulated public in implementing existing requirements, enhancing both predictability and consistency in implementation.

For the above reasons a Use Attainability Analysis (UAA) is neither required nor appropriate for designation of existing uses. (40 CFR section 131.10(k). Wetland Habitat (WET), Flood Peak Attenuation (FLD), Water Quality Enhancement (WQE), and the Native American Cultural (CUL) uses are existing uses and the Regional Water Board is required to protect water quality to support them. Regional Water Board staff is proposing to designate these uses in the Basin Plan on a refined scale, thus eliminating ambiguities that arise when uses are not clearly outlined in the Basin Plan. More precise information is also presented in the Basin Plan, including the specific area or waterbody that supports the use and the obligations toward protection of the use.

As described on page 2 – 9.00 of the June 13, 2003 (strikeout/underline removed) draft of the Beneficial Use Amendment, waterbodies have been designated with a potential use if they meet one or more of the following criteria: 1) uses that were in existence prior to November 28, 1975, but which are not currently being attained, 2) plans already exist to put the water to those uses, 3) conditions make such future use likely, 4) the water has been identified as a potential source of drinking water based on the quality and quantity available (see *Sources of Drinking Water Policy*, in Appendix 7), 5) existing water quality does not support these uses, but remedial measures may lead to attainment in the future, or 6) there is insufficient information to support the use as existing, however, the potential for the use exists and upon future review, the potential designation may be re-designated as existing.

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<sup>1</sup> Date of the first Water Quality Standards Regulation published by USEPA (November 28, 1975) 40 CFR 131.3 (e)

The above criteria establish that either the potential use is already being attained (i.e. the water quality is suitable to allow the use to occur) or the use can be reasonably attained by implementing effluent limits required under sections 301(b) and 306 of the CWA and by implementing cost-effective and reasonable best management practices (BMPs), and non-point source control measures. No new water quality objectives are proposed or envisioned because of potential beneficial use designations. In a rare instance, if following implementation of control measures as stated above, the water quality suitable for the beneficial use is not achieved, the potential use can be de-designated through a Use Attainability Analysis (UAA).

In conclusion, a UAA is not appropriate for existing uses that are already attained. However, a UAA it may be appropriate in the future for a potential use that is not attained, in a specific waterbody, following implementation of cost-effective and reasonable remedial/control measures.

23. COMMENT: [California Farm Bureau]

The Agricultural Water Supply (AGR) use has been left off of list of beneficial uses under the heading "Rivers and Streams."

RESPONSE: Staff concurs that this use should be mentioned and has added AGR to the list of common beneficial uses under the heading "Rivers and Streams."

24. COMMENT: [Trout Unlimited]

Support the designations of COLD, SPWN and RARE to all eleven HSAs within the Russian River HU. They request that the WARM designation not be added to the Laguna HSA, "as elevated water temperatures are stressful and lethal to the cold water species of salmonids (i.e. Coho and Steelhead)."

RESPONSE: Please see response to Comment #5.

25. COMMENT: [Peter Ribar, Campbell Timberland Management] Request that Page 2 – 2.00, Biologically Significant Areas (formerly Preservation of Special Biological Significance), be amended to clarify that the beneficial use is restricted to officially designated areas. Suggests adding the word "officially," as follows: "Uses of water that support officially designated areas..."

RESPONSE: Staff concurs that this adds further clarification to the language and has amended the definition as suggested.

26. COMMENT: [Peter Ribar] Request that the definition of the beneficial use Water Quality Enhancement (WQE) on page 2 – 4.00, be amended to read Wetland Water Quality Enhancement or as the other two proposed wetland beneficial uses have in their title or definition.

RESPONSE: Our definition of WQE, which is identical to the definition adopted by the Lahontan Region, acknowledges wetlands as waters of the State and of the U.S. For this reason, we did not initially see the need to include the term "wetlands" in the language. Wetlands as well as other waters, such as riparian areas, meet the definition of this use. Therefore, the definition has been modified for clarification purposes, to include the underlined language below:



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Beneficial uses of waters, including wetlands and other waterbodies, that support natural enhancement or improvement of water quality in or downstream of a waterbody including, but not limited to, erosion control, filtration and purification of naturally occurring water pollutants, streambank stabilization, maintenance of channel integrity, and siltation control.

27. COMMENT: [Peter Ribar] Request that the definition of the Wetland Habitat (WET) beneficial use on page 2 – 4.00 be modified to delete the terms “invertebrates and insects.” The supporting rationale for this request is that it makes the use more consistent with the version adopted by the Los Angeles Region and “provides for some weighting of values.”

RESPONSE: Staff does not agree with the rationale for deleting the terms “invertebrates and insects.” Peer Reviewer, Dr. Robert Gearhart, suggested the addition of these terms to the definition. These components of the definition (“invertebrates and insects”) should be maintained to recognize their importance in wetland ecosystems.

28. COMMENT: [Peter Ribar] Request to delete the three implementation criteria or the entire paragraph listed on page 2 – 11.00, in the Wetland subsection as this language is more appropriate for the Implementation Plans Chapter.

RESPONSE: We concur. Staff has removed the referenced paragraph, which included implementation language. This language will be included in a future update of the Basin Plan, Implementation Plans (Chapter 3).

29. COMMENT: [Peter Ribar] Suggestion to delete the general waterbody category entitled “Minor Coastal Streams” on the last page of Table 2-1, as it presents a redundancy issue.

RESPONSE: Staff would like to clarify that the “Minor Coastal Streams” category had been removed in the initial draft, but was re-inserted in the draft hand-out at the May 15<sup>th</sup> Hearing. The reason for retaining this waterbody category is that there is one hydrologic unit (Eureka Plain HU) that is not broken down into hydrologic areas and subareas. For this reason, staff has listed individual waterbodies within that HU. Beneficial uses designated to those specific waterbodies also apply to their tributaries; however, there may be minor coastal streams within the HU that drain directly to the Pacific Ocean. The beneficial uses designated to the “Minor Coastal Streams” category would apply to those streams.

30. COMMENT: [Peter Ribar] Unclear on nexus between proposed designation of uses and the supporting documentation. States that there should have been another table with coding indicating which categories of information were used to justify the beneficial use

RESPONSE: (for clarification purposes only. Comment is outside of original scope). Appendix A to the Staff Report presents the tables, which provide the supporting information for beneficial use designations within each hydrologic area and/or subarea. These sources of supporting information, which will become include interviews with CDFG, RWQCB, and USFS personnel, and agency databases.

31. COMMENT: [Pillsbury Winthrop, on behalf of California Forestry Association (CFA)]  
Comment I, page 3

“The proposed beneficial use designations should be reexamined for consistency with their statutory purpose.”

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RESPONSE: The new and revised beneficial use designations and the proposed beneficial uses are consistent with what is required by the Federal Clean Water Act (CWA) and the Porter Cologne Act, as outlined in the "Federal and State Regulatory Context" sections of the CFA comment letter, as well as the Staff Report for the Beneficial Use Amendment.

32. COMMENT: [Pillsbury Winthrop, on behalf of California Forestry Association (CFA)]

Comment I, page 3 (continued)

"As proposed, the new and revised designations could result in an impermissible broadening of the scope of Regional Board regulation beyond water quality control to land use regulation." Specifically, it appears that CFA is concerned that water quality objectives promulgated to meet designated beneficial uses would provide basis for the Regional Water Board to "impose objectionable and unnecessarily strict regulations on its members' forestry activities, increase overall costs of compliance and cause serious economic consequences."

RESPONSE: This update simply 1) officially recognizes wetlands as waters of the U.S. and/or of the State as they are defined under both Federal and State regulations; 2) provides clear definitions of what constitute wetlands, and 3) recognizes the beneficial uses of wetlands which already exist, and we are obliged to protect, by regulating the discharge of waste.

We are proposing to recognize the following three beneficial uses of wetlands; Water Quality Enhancement, (WQE), Wetland Habitat (WET), and Flood Peak Attenuation / Flood Water Storage (FLD). We already regulate existing and potential discharges to protect wetlands for these beneficial uses under the State and Federal regulations. Therefore, no new regulations or objectives are proposed or envisioned.

In addition, the proposed Native American Cultural use (CUL) requires recognition for several reasons: 1) it is an existing use of waters in the region; 2) it has been approved by the U.S. EPA; 3) States are required to be consistent with the requirements of downstream uses; 4) the use has many components that overlap with already existing uses including MUN, REC-1, NAV, and COLD. For these reasons, no new objectives are proposed or envisioned to support this use.

Please also refer to the response to comment #22 above.

33. COMMENT: [Pillsbury Winthrop, on behalf of California Forestry Association (CFA)]

Comment I, Page 2

Comment under 1C, Page 5

"The proposed designations (beneficial uses) are inappropriate under the Clean Water Act and the Porter Cologne Act." CFA states concern that the proposed beneficial uses go too far toward regulating land use activities, which exceeds the Regional Board's authority and adversely affect our members' use of their property and conduct of their businesses.

RESPONSE: The three wetland uses, the Native American Cultural use, and the revised Biologically Significant Areas use proposed by staff are clearly beneficial uses of water that occur in the state of California as well as within this Region. It is not the intent of staff to go beyond the regulation of water quality by recognizing these uses. Staff disagrees that these uses are being adopted as goals, functions and/or values. The Regional Water Boards are required by Federal and State regulations to identify the existing and potential beneficial uses of water. This is what we are proposing to accomplish with this over-due update of the

Beneficial Uses Chapter of the Basin Plan. In addition, please see response to comment # 22 above.

34. COMMENT: [Pillsbury Winthrop, on behalf of California Forestry Association (CFA)]  
Comment under 1C, Page 4

"Some of the proposed beneficial uses would designate activities related to water as uses of water, e.g. sightseeing, picnicking, hunting, aesthetic enjoyment. See Non-Contact Water Recreation (REC-2). Therefore, if proposed timber harvesting operations are viewed as inconsistent with any of these uses once designated, then such operations would be precluded as inconsistent with conditions of the waiver (Resolution R1-2002-0109, Interim Categorical Waiver of Waste Discharge Requirements Related to Timber Operations), regardless of the impact on water quality."

RESPONSE: The Non-Contact Water Recreation (REC-2) use is an original beneficial use on the standard statewide adopted list. This use was established in accordance with the CWA Sections 101 (a)(2) and 303(c)(2), which requires the States to designate water for public water supplies, protection and propagation of fish, shellfish and wildlife, recreation in and on water, agriculture, industrial, and other purposes including navigation. Staff notes that this CWA citation is also included in the CFA letter on Page 2. Water quality has been protected for this use since the adoption of the first Basin Plan in 1971.

35. COMMENT: [Pillsbury Winthrop, on behalf of California Forestry Association (CFA)]  
Comment under 1C, Page 5

"...as recognized by the court, the authority is designed to establish actual "uses" of water and then to protect the quality of water for such uses."

RESPONSE: This comment details precisely what staff is proposing to accomplish with this update of the Beneficial Use Chapter of the Basin Plan.

36. COMMENT: [Pillsbury Winthrop, on behalf of California Forestry Association (CFA)]  
Comment II, page 8

The four new designations (staff believes CFA means "beneficial uses") proposed by staff have not been adopted by the State Water Board for statewide use or for use on the North Coast. These proposed designations (beneficial uses) have not received approval from the State's Office of Administrative Law (OAL) for statewide application or North Coast Region adoption.

RESPONSE: Staff maintains that the statements made in the Staff Report are accurate and intended to be clear; however, we will expand on this for the purpose of further clarification.

The Staff Report, dated March 4, 2003, stated that the three wetland uses (WET, WQE, and FLD) are proposed for use in this region and that the uses have been adopted by other Regional Boards (Lahontan Region and Los Angeles Region). These three uses have been reviewed and approved by the State Water Board and reviewed and approved by the State's Office of Administrative Law (OAL). They have also been reviewed and approved by the U.S. EPA.

The Native American Cultural use is a proposed new use designation in this region that has not been adopted by any other Regional Boards nor the State Water Board. However, the use designation has been approved by the U.S. EPA as presented in the Hoopa Valley Tribe Water Quality Control Plan, dated 2002. Once the CUL use is adopted by this Region,

it will then need to be reviewed and adopted by the State Water Board. Subsequently, it will need to be reviewed and approved by the OAL and finally, it will have to be reviewed for approval by the U.S. EPA.

Oscar Balaguer, Chief of the State Water Board's Water Quality Certification Unit in the Division of Water Quality has commented that the proposed beneficial uses will be an excellent model for developing statewide beneficial uses toward more effectively recognizing (and protecting) wetland and riparian functions.

37. COMMENT: [Pillsbury Winthrop, on behalf of California Forestry Association (CFA)]

Comment III, page 10

"The Regional Board should reevaluate the policy underlying the proposed designation of Native American Culture (CUL) in light of existing beneficial uses. " The actual uses of water stated under this designation (use) appear to duplicate existing uses. The uses cited in the comment letter as duplicatory include: Municipal Drinking Water (MUN), Cold (COLD) and Warm (WARM) Freshwater Habitat, Commercial and Sport Fishing (COMM), Aquaculture (AQUA), and Navigation (NAV).

RESPONSE: While staff agrees that several existing beneficial uses overlap some aspects of the new CUL use, this is still a present and historic use of water that necessitates individual recognition and is not fully addressed by existing use designations. Many of the standard statewide uses have similar or overlapping aspects as well. For example, both MUN and REC-1 include water contact and ingestion of water, but do not necessarily address the full scope of the cultural uses, e.g. the Native American basket weavers' practice of softening certain riparian plants with the mouth before use, as noted by tribal commenters.

38. COMMENT: [Pillsbury Winthrop, on behalf of California Forestry Association (CFA)]

Concluding Statement, Page 10

CFA supports "the efforts to establish and refine reasonable designations of beneficial uses. However, we are concerned by the approach taken by the Regional Board. By establishing these beneficial uses as described above, the Regional Board action would likely necessitate a review and updating of applicable water quality objectives, and thereby raise the threshold that permit applicants and those seeking eligibility for conditional waivers from waste discharge requirements must achieve. In doing so, the Regional Board could impose significant regulatory burdens that are contrary to the State's established water quality regulatory system."

RESPONSE: Once the beneficial uses are adopted, the next step would include a review of the water quality objectives (WQOs) to determine if the existing WQOs adequately protect the new uses. As pointed out in the comment letter and our responses to comments # 22 and # 32, all of the proposed beneficial uses are existing and have overlapping components of other existing uses. Because of this, it is expected that existing WQOs will be found to be sufficient to protect these uses for most of the waterbodies. If, during update of the objectives Chapter, some objectives are proposed for revision, a thorough technical and economical analysis would be required at that time.

39. COMMENT: [Sonoma County Water Agency]

Several minor editorial comments (see SCWA letter dated May 14, 2003) were made in the Agency's letter.

RESPONSE: Staff appreciates the comments that were made based on the Agency's thorough review of the Draft Amendment and the associated Staff Report. We have incorporated the suggested changes into the revised versions of the Beneficial Use Amendment and the Staff Report, dated June 13, 2003.

40. COMMENT: [Sonoma County Water Agency]

"With regard to the beneficial use POW, the Agency believes that there are three hydroelectric facilities within the Russian River HU. These facilities are located at Warm Springs Dam (HSA 114.24), Coyote Valley Dam (HSA unclear), and the tailrace of the Potter Valley Project (HSA 114.32). It is not clear to the Agency, which HSA (114.31 or 114.32) Coyote Valley Dam is in. According to the Federal Energy Regulatory Commission (FERC) website, FERC project number 6154 (Mill and Sulfur Creeks) is located in Humboldt County, which is not in the Russian River HU. The Agency requests this project be included as a POW use on Table 2-1 within the correct HU. The Agency also requests that with regard to the POW beneficial use on Table 2-1, the HSAs encompassing the three (above-mentioned) projects have 'E' (existing) designations and that all other HSAs within the Russian River HU be designated 'P' (potential)."

RESPONSE: Staff has made the corresponding revisions to the Beneficial Uses Table, to accurately reflect the locations of the hydropower projects. The Coyote Valley Dam is in the Coyote HSA (114.32) and the POW use has been designated to that HSA.

41. COMMENT: [Sonoma County Water Agency]

The Agency questions the appropriateness of the 'P' (potential) designation for SHELL in the three listed HSAs within the Russian River HU.

RESPONSE: The SHELL use has been designated as potential in areas or waterbodies where the possibility of shellfish harvesting exists due to the reported presence of shellfish.

42. COMMENT: [Sonoma County Water Agency]

Request that with regard to the beneficial use AQUA, that the Guerneville and Austin Creek HSAs be changed to 'P', and the Coyote Valley HSA be changed to 'E' to reflect the collection of spawning salmonids and subsequent release of juveniles at the hatchery facility at the base of Coyote Valley Dam.

RESPONSE: Staff has designated the AQUA use to areas and waterbodies where aquaculture facilities, or other facilities such as hatcheries which meet the definition of AQUA, are located. This does not include locations where the collection and release of salmonids occur.

43. COMMENT: [Bernie Bush, Simpson Resource Company]

Supports the comments submitted by Pillsbury Winthrop on May 14, 2003 and requests consideration of the necessity of the proposed amendment in the context of the regulatory implications. States that the revised documents were not available on the Regional Water Board's website, therefore requests that the Board not take action on these proposals until there can be full consideration by all parties.

RESPONSE: Please see responses to Pillsbury Winthrop's comments (#31-38) above. The revised Staff Report, Amendment, and Response to Comments could not be finalized until after the comment period deadline on June 12, 2003. These documents were made available at the Regional Water Board office and on the website at the earliest possible date and time on June 13, 2003.